

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

11 ROBERT M. GOGGIN,) 3:17-cv-00262-HDM-VPC
12 Plaintiff,)
13) ORDER
14 vs.)
15 ENTERPRISE LEASING COMPANY-WEST,)
16 LLC, a Delaware Corporation; ABC)
CORPORATIONS I-X, inclusive,)
BLACK AND WHITE COMPANIES, and)
DOES I-XX, inclusive,)
17 Defendants.)
18)

19 Before the court is defendant Enterprise Leasing Company-West,
20 LLC's ("Enterprise") motion to dismiss the amended complaint. (ECF
21 No. 4). Plaintiff Robert M. Goggin ("plaintiff") responded (ECF 15)
22 and Enterprise replied (ECF No. 21).

23 This action arises from an automobile accident in which plaintiff
24 was struck by a vehicle driven by James Sidney Proctor ("Proctor").
25 Proctor crossed all lanes of traffic, drove onto a sidewalk, and hit
26 plaintiff as he was jogging. Plaintiff suffered substantial bodily
27 harm. Enterprise owned the vehicle and rented it to Proctor.
28 Plaintiff brought two claims against Enterprise in the amended

1 complaint, one based on negligence and one based on permissive use.
2 The first amended complaint alleges that at the time "defendants
3 supplied and entrusted the automobile to Proctor, it knew or in the
4 exercise of reasonable care should have known that Proctor did not
5 have a valid Nevada driver's license, and that he was an incompetent
6 and unfit driver and would create an unreasonable risk of injury to
7 persons and property on the public streets and highways." (ECF No.
8 1-2 at ¶ 10).

9 Enterprise moves to dismiss the amended complaint pursuant to
10 Federal Rule of Civil Procedure 12(b) (6) for failure to state a claim.
11 In considering a motion to dismiss for failure to state a claim under
12 Federal Rule of Civil Procedure 12(b) (6), the court must accept as
13 true all material allegations in the complaint as well as all
14 reasonable inferences that may be drawn from such allegations. *LSO,*
15 *Ltd. v. Stroh*, 205 F.3d 1146, 1150 (9th Cir. 2000). The allegations
16 of the complaint also must be construed in the light most favorable
17 to the nonmoving party. *Shwarz v. United States*, 234 F.3d 428, 435
18 (9th Cir. 2000). The purpose of a motion to dismiss under Rule
19 12(b) (6) is to test the legal sufficiency of the complaint. *Navarro*
20 *v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). The court can grant the
21 motion only if it is certain that the plaintiff will not be entitled
22 to relief under any set of facts that could be proven under the
23 allegations of the complaint. *Cahill v. Liberty Mut. Ins. Co.*, 80
24 F.3d 336, 338 (9th Cir. 1996).

25 Enterprise argues that the amended complaint fails to contain
26 sufficient facts to support a negligent entrustment claim.
27 Specifically, Enterprise asserts that plaintiff has not pled a duty
28 or a breach of that duty. Additionally, Enterprise argues that it

1 "could have complied with its statutory requirements [under Nevada
2 law] without learning that the license was invalid." (ECF No. 4 at
3 4). Plaintiff's amended complaint states a plausible claim for
4 negligent entrustment. In so deciding, the court notes that
5 Enterprises's motion largely seeks detailed factual allegations that
6 are not required by *Twombly* or *Iqbal*. Accordingly, the motion to
7 dismiss the negligent entrustment claim is denied.

8 Enterprise also argues that the amended complaint fails to
9 contain sufficient facts to support a claim for permissive use as
10 "there is no recognized cause of action for 'permissive use' in
11 Nevada." (*Id.* at 5). Plaintiff failed to provide any points and
12 authority in support of his claim for permissive use and failed to
13 respond to Enterprise's motion to dismiss this claim. Pursuant to
14 Local Rule 7-2(d), this failure constitutes a consent to the dismissal
15 of the claim. As such, the court dismisses plaintiff's permissive use
16 claim.

17 Plaintiff seeks leave to amend his complaint to add a claim for
18 a violation of NRS 483.610(1), which requires rental car companies to
19 rent vehicles only to individuals that are duly licensed. Rule 15(a)
20 provides that leave to amend should be "freely" given "when justice
21 so requires." Fed. R. Civ. P. 15(a)(2). In determining whether to
22 grant leave to amend, a court considers the following factors: (1) bad
23 faith, (2) undue delay, (3) prejudice to the opposing party, (4)
24 futility of amendment, and (5) whether the plaintiff has previously
25 amended the complaint. *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th
26 Cir. 2004). "'Dismissal without leave to amend is improper unless it
27 is clear, upon de novo review, that the complaint could not be saved
28 by amendment.'" *Gompper v. VISX, Inc.*, 298 F.3d 893, 898 (9th Cir.

1 2002) (quoting *Polich v. Burlington N., Inc.*, 942 F.2d 1467, 1472 (9th
2 Cir. 1991)). Because Enterprise does not argue that leave to amend
3 would be futile, the court will allow the amendment.

4 Accordingly, the motion to dismiss (ECF No. 4) is granted in part
5 as to plaintiff's claim for permissive use. Plaintiff shall file his
6 amended complaint on or before July 11, 2017. Enterprise's motion for
7 leave to supplement (ECF No. 29) is denied without prejudice. The
8 motion to seal Exhibit 2 to the motion to supplement (ECF No. 30) is
9 granted.

10 IT IS SO ORDERED.

11 DATED: This 28th day of June, 2017.

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14 UNITED STATES DISTRICT JUDGE
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